IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3039 of 2006

Date of Decision: 19.03.2007

Gurbaksh Singh ..Appellant

Vs.

Harjit Singh ..Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.R.S.Mamli, Advocate,
for the petitioner.

Mr.Y.P.Singla, Advocate,
for the respondent.

Vinod K.Sharma,J. (Oral)

This appeal has been filed against the judgment and decree passed by the courts below vide which suit for declaration filed by the plaintiff-appellant claiming that consent decree passed in favour of defendant-respondent was null and void and outcome of fraud and misrepresentation was not binding on him. It was also claimed that the property in the hands of Ishar Singh was ancestral in nature and therefore, he was not competent to suffer the consent decree. The appellant gave up

his challenge on the ground of fraud and misrepresentation and only contested the suit on the ground that the consent decree for property worth Rs.100/- and above was required to be registered and once it was not done his rights in the property cannot be affected.

Learned courts below on appreciation of evidence especially keeping in view the admission made by the appellant-plaintiff came to the conclusion that the property in dispute was self acquired property of Ishar Singh. It was also held that the plea of the plaintiff that in the family settlement this land was given to him was not proved on record and accordingly dismissed the suit.

Pending appeal the appellant moved an application under Order 6 Rule 17 of the Code of Civil Procedure (for short the Code) for the amendment of the suit to seek the relief of possession along with declaration. However, the said application was also dismissed and the said order was not challenged before the learned lower Appellant court. The reading of para No.12 of the judgment shows that wrong stand was taken that application moved by the appellant under Order 6 Rule 17 of the Code was not considered, whereas in fact it is admitted case that the said application was dismissed and therefore, there is no illegality in the order passed by the courts below as is sought to be contended by the learned counsel for the appellant.

The learned courts below have also taken note of the fact that on earlier occasion the suit filed by the appellant against his father qua this transfer was also dismissed and appeal against the said order also met with the same fate. The concurrent finding of fact recorded by the courts below

are not open to challenge before this Court in regular second appeal.

Dismissed.

March 19,2007 **(Vinod K.Sharma)**
rp **Judge**